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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1944.

No. 380

CANADIAN RIVER GAS COMPANY, a Corporation,
PETITIONER,

v.

FEDERAL POWER COMMISSION, CITY AND COUNTY OF DENVER, COLORADO, PUBLIC SERVICE COMMISSION OF WYOMING, COLORADO-WYOMING GAS COMPANY, PUBLIC SERVICE COMPANY OF COLORADO, and COLORADO INTERSTATE GAS COMPANY, RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

The petitioner herein respectfully prays for a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Tenth Circuit, affirming an order of the Federal Power Commission under the Natural Gas Act of 1938, which order reduced the rates or charges for natural gas charged by petitioner in the amount of $551,000 annually for natural gas sold to Colorado Interstate Gas Company, and the amount of $10,000 annually for natural gas sold to Clayton Gas Company.[1]

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[1] This petition is being filed simultaneously with a like petition by Colorado Interstate Gas Company, and the two petitions are made on a joint printed record in the Circuit Court of Appeals.

OPINIONS BELOW.

The opinion of the Circuit Court of Appeals (R., V. 8, 5066-5094) is reported in 142 Fed. (2) (Adv. Op.) p. 943. The opinion and order of the Federal Power Commission can be found at R., V. 1, 140-195; 43 P.U.R. 205. (n. s.)

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on July 8, 1944. (R., V. 8, 5094) The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 19(b) of the Natural Gas Act.

STATUTE INVOLVED.

The pertinent provisions of the Natural Gas Act of 1938 (52 Stat. 821; 15 U.S.C. Sec. 717) are set forth in Appendix A, *infra*. (pp. 45-48)

ABBREVIATIONS USED.

For the sake of brevity the following abbreviations will be used in this petition:

"R." for the printed Record filed herein, and "V" for the "Volume" of the Record, followed by the page number in the Record to which reference is made.

"Circuit Court" for "United States Circuit Court of Appeals for the Tenth Circuit."

"Commission" for "Federal Power Commission."

"Act" for "Natural Gas Act of 1938."

"Canadian" for the petitioner, "Canadian River Gas Company."

"Colorado Interstate" for "Colorado Interstate Gas Company."

"Southwestern" for "Southwestern Development Company."

"Standard" for "Standard Oil Company (New Jersey)."

"Cities Service" for "Cities Service Company."

"Cost Contract" for the Agreement dated as of January

3, 1928, between Canadian and Colorado Interstate covering the purchase and sale of gas at cost under the terms of which petitioner has been ordered by the Commission to reduce its rates or charges in the amount of $551,000 annually.

"Natural Gas Pipeline case" for "*Federal Power Commission v. Natural Gas Pipeline Company*," 315 U. S. 575.

"Hope case" for "*Federal Power Commission v. Hope Natural Gas Company*," 320 U. S. 591.

QUESTIONS PRESENTED.

As will be shown more fully in the Statement of the matters involved in this petition, which follows hereinafter, the questions presented are:

1. Whether the Circuit Court, after correctly holding that the Commission has no rate regulatory jurisdiction over Canadian's production and gathering properties, facilities and business, erroneously concluded and ruled that the Commission in this case did not exercise such prohibited jurisdiction.

2. Whether, even assuming, *arguendo*, that the Commission has rate regulatory jurisdiction over Canadian's production and gathering properties, facilities and business, the Commission can, consistently with the Fifth Amendment to the Constitution of the United States, the requirements of the Act, and the decisions of this Court in the Natural Gas Pipeline, Hope and other cases, limit Canadian generally to a return only on the "wildcat" or original cost of its gas leaseholds to predecessor companies prior to discovery and development over 20 years ago, to the exclusion of all evidence of value, market or otherwise, the result of this procedure being, among other things, the inclusion in the Commission's rate base of a substantial block of Canadian's most valuable leaseholds at zero valuation and a still larger block of valuable leaseholds at only 10¢ per acre valuation.

3. Whether, even assuming, *arguendo*, that the Commission has rate regulatory jurisdiction over Canadian's production and gathering properties, facilities and business,

and further assuming, *arguendo,* that it is proper in this case to include Canadian's leaseholds and wells in the rate base on the basis of original cost, the Commission can, consistently with the Fifth Amendment to the Constitution of the United States, the requirements of the Act, and the principles announced by this Court in the Natural Gas Pipeline, Hope and other cases, disallow and eliminate more than $3,000,000, plus interest during construction paid thereon, from the amount actually invested by Canadian in its original acquisition of production properties in about 1928 solely upon the ground that the sum so eliminated allegedly represented a profit between affiliated companies, and, therefore, formed no proper part of the cost of said properties, where the Record clearly demonstrates that the transaction resulting in the acquisition of said properties was not between affiliates and that the price paid therefor was not excessive.

4. Whether the Commission has the power, consistently with the Fifth Amendment to the Constitution of the United States and the provisions of the Act, to abrogate and nullify the cost reimbursement provisions of Canadian's Cost Contract covering the sale of gas to Colorado Interstate, in view of the fact that said Contract had been entered into long prior to, and had been substantially performed at the time of, the adoption of the Act; and if it be held that the Commission has such power, then whether the Commission has exercised such power in an arbitrary and capricious manner by abrogating and nullifying the cost reimbursement provisions of said Contract, while at the same time leaving Canadian with the impossible task of performing all obligations of that Contract which give rise to the necessity for full cost reimbursement, including obligations over which the Commission has no jurisdiction.

5. Whether the Commission acted erroneously, arbitrarily and capriciously, and without support of substantial evidence, in determining the life of Canadian's gas reserves to be 53 years from December 31, 1939, and in computing Canadian's depreciation and depletion allowances on said assumed life, where the uncontradicted evidence will support a finding of not more than 27 years from said date.

6. Whether the Commission erroneously, arbitrarily and capriciously, overstated Canadian's annual income available for return in an amount of not less than $114,000, which sum constitutes a part of the reduction made by the Commission in its rate reduction order, and therefore deprives Canadian of this sum annually, in violation of the Fifth Amendment to the Constitution of the United States, the provisions of the Act, and the decisions of this Court.

7. Whether the Commission can, consistently with the Fifth Amendment to the Constitution of the United States and the requirements of the Act, refuse to allow Canadian a sum over and above normal depreciation on properties in place, which will be sufficient to enable Canadian to make necessary interim replacements of property which will be required long before the end of the 50-year service life period adopted by the Commission.

8. Whether the Commission can, consistently with the Fifth Amendment to the Constitution of the United States and the provisions of the Act, reduce the rates and charges of Canadian on that part of its natural gas sales to Colorado Interstate which is not sold by the latter for ultimate distribution to the public but is sold by it directly to its industrial customers; furthermore, independent of the above question, whether the Commission erred in making no separation or allocation as between Canadian's properties devoted to intrastate sales in Texas and its properties devoted to interstate sales, or as between the properties of Canadian and the properties of Colorado Interstate, and in using in lieu thereof a substitute method of allocation of cost of service which results in burdening non-regulable gas with costs actually chargeable against regulable gas, in violation of the Fifth Amendment to the Constitution of the United States and the Act.

9. Whether the Commission's rate reduction order, when viewed as a whole, can be sustained as being just and reasonable, or in the public interest, in the light of the requirements of the Act and the "end result" and "rate impact" principles announced by this Court in the Natural Gas Pipeline and Hope cases.

STATEMENT.

Among other things, it is contended in this petition that the Commission's order, when viewed as a whole, cannot be sustained as being just and reasonable, or in the public interest, in the light of the requirements of the Act or the "end result" and "rate impact" principles announced by this Court in the Natural Gas Pipeline and Hope cases. Hence, a brief statement of the pertinent historical facts involved, taken from a printed record containing over 5,000 pages, is deemed imperative. For convenient reference purposes, appropriate headings have been incorporated from time to time throughout this Statement.

The Petitioner.

Canadian produces and gathers natural gas in the Texas Panhandle Field, which it subsequently transports and sells to Colorado Interstate at two points, i.e., (1) near Clayton, New Mexico, for resale to customers of Colorado Interstate in Colorado, and (2) near Gray, Oklahoma, for resale to Natural Gas Pipeline Company of America. Canadian also sells smaller quantities of gas to Amarillo Oil Company at the wellhead and along its pipe line system for resale in the State of Texas and to Clayton Gas Company for resale in the State of New Mexico. Canadian produces all gas which it sells from a block of gas leaseholds embracing approximately 300,000 acres in the Texas Panhandle Field, substantially all of which was acquired from Amarillo Oil Company in 1928 under circumstances hereinafter related. (R., V. 1, 143, 402) All of the issued and outstanding capital stock of Canadian has been at all times owned by Southwestern.

General History of Canadian's Gas Leasehold Properties.

Over 27 years ago (1917), a few ranchers and small businessmen residing in and about Amarillo, Texas, incorporated and organized a small corporation, called "Amarillo Oil Company," for the purpose of drilling a "wildcat" well for oil in what has now become the great Texas Panhandle Field in the State of Texas. (R., V. 5, 2837, 3040) At that time there had been no discovery of oil or gas within 200 miles of the proposed well location. (R., V. 7, 3673)

Consequently, the cost to Amarillo Oil Company of assembling the block of leases to be tested was purely nominal, except for drilling obligations.

After many unfortunate experiences, financial and otherwise, the "wildcat" test well was finally completed in the fall of 1918 as a gas well—the first commercial producer of either oil or gas in the Texas Panhandle Field. From that successful "wildcat" beginning, the field has been subsequently developed by the drilling of successive test wells until it now contains 1,500,000 proven acres on which there are located approximately 1,650 wells producing gas only, and approximately 4,200 wells producing both oil and gas. (R., V. 1, 409) Canadian's acreage produces no oil.

In 1924 Southwestern became the owner of all the capital stock of Amarillo Oil Company. In the meantime, Amarillo Oil Company had acquired additional blocks of leaseholds in the field, and its total holdings were then approximately 300,000 acres. Substantialy all of such leaseholds were likewise granted for oil exploration at a time when the acreage embraced therein was classified as "unproven" and valued accordingly. Additional test wells were drilled on this acreage most of which proved to be substantial gas producers, although some resulted in dry holes.

Amarillo Oil Company had no market at that time for its gas production, except for relatively small sales *at the wellhead* for the City of Amarillo, Texas, and vicinity, and one industrial sale at a plant near Amarillo. It had one well with a capacity substantially in excess of the quantity required to supply its entire available market. (R., V. 1, 459)

Added to the lack of adequate markets, the gas properties and investments of Amarillo Oil Company were threatened at that time with still another menace. Tremendous volumes of gas in the field were being blown and wasted in the air, to the extent that it became a national scandal. (R., V. 7, 3673) Enormous quantities of gas were being consumed by carbon black plants and natural gasoline plants. The seriousness of the situation was ultimately recognized by the Texas Legislature, which enacted new legislation to

control the wastage of gas, as well as its use for carbon black purposes. (R., V. 7, 3675-3676)[2]

It became obvious that the Company could not realize upon its extensive gas properties unless new markets of a substantial character were developed promptly. There were then no long-distance pipe lines connected to the field. Pipe line markets in the immediate vicinity of the field were either occupied or too small to be attractive, and it seemed advisable to look for markets at greater distances. (R., V. 1, 402)

Origin of Denver Project.

The transportation of gas by pipe line over long distances was in its infancy. Neither Southwestern nor any of its affiliated companies had had any previous experience in transporting gas over long distances; moreover, Southwestern and its subsidiaries lacked the necessary capital with which to construct such a pipe line. (R., V. 1, 402, 403) The City of Denver, located a distance of approximately 350 miles from the Texas Panhandle Field, and intervening territory, seemed to be the closest available market for natural gas in substantial quantities. (R., V. 1, 402) In 1926 Southwestern approached Standard Oil Company (New Jersey) regarding the construction of a pipe line project to Denver and intervening territory, because the latter had had a long and successful experience in operating natural gas projects in other areas, and was fully able to finance such a project. (R., V. 1, 403) Standard investigated the feasibility of the project with favorable results. Cities Service Company was then brought into the negotiations because its subsidiary, Public Service Company of Colorado, held a manufactured gas franchise in Denver, and another subsidiary company held a similar gas franchise in Pueblo, Colorado. (R., V. 1, 403)

The three parties, to-wit: Standard, which was experienced in operating long-distance pipe lines and had the ability to finance the same; Cities Service, which controlled important market outlets in Colorado through its subsidiaries; and Southwestern, which controlled substantial gas reserves.

[2]Thompson v. Consolidated Gas Utilities Corp., 300 U. S. 55.

in the Texas Panhandle Field through its subsidiary, Amarillo Oil Company, began negotiations which continued for almost a year and finally culminated in an agreement between the parties on April 5, 1927, for the construction of a pipe line to Denver and intervening points and the acquisition of gas leaseholds and wells owned by Amarillo Oil Company for the project. (R., V. 1, 403-416.)

Neither Standard nor Cities Service had any interest whatsoever in either Amarillo Oil Company or Southwestern on that date (April 5, 1927), prior thereto, or subsequent thereto. There was no corporate affiliation between any of the three participating companies which executed the contract of April 5, 1927. (R., V. 1, 460, 613-622) *As stated above, the contract was entered into only after long and continued arm's-length negotiations between the parties* (R., V. 1, 493-526)

The Denver Project agreement of April 5, 1927, between Standard, Cities Service and Southwestern (Ex. 1; R. V. 1, 381-400), known as the "Memorandum of Stipulations," sets out in considerable detail the terms and conditions under which the parties agreed to develop and participate in the project, but it is important here to point out briefly two of the principal obligations assumed thereunder by Southwestern.

Under this three-party agreement Southwestern obligated itself (1) to organize and incorporate a company (now Canadian), *separate and apart from its other companies and projects,* to which it would cause Amarillo Oil Company to convey, free of all debts, liens and encumbrances, all of Amarillo Oil Company's gas leaseholds, rights and wells in the Texas Panhandle Field at an agreed price of \$5,000,000; and (2) to cause the company receiving such gas leaseholds, rights and wells to enter into a long-term contract to dedicate its gas reserves to the project and to sell gas to the principal project company (now Colorado Interstate) on a cost basis in consideration of the issuance by Colorado Interstate to Southwestern, as the nominee of Canadian, of 42½% of its authorized common stock with no par value and \$1,000,000 par value of its authorized 6% preferred stock. (R., V. 1, 381-400)

Canadian's Purchase of Gas Leaseholds, Rights and Wells for $5,000,000.

The purchase price of $5,000,000, as negotiated and agreed to by Standard, Cities Service and Southwestern, for the gas leaseholds, rights and wells of Amarillo Oil Company, which was to form the foundation for the project, was advanced and paid to Amarillo Oil Company by Standard in two equal payments made in December, 1927, and January, 1928, which was prior to the incorporation of Canadian. (R., V. 2936) Pursuant to its obligation under the original three-party project agreement, Southwestern organized Canadian in February, 1928, *separate and apart from its other companies and projects,* and subsequently caused Amarillo Oil Company to formally transfer and convey its gas leaseholds, rights and wells to Canadian. There were no negotiations whatsoever between Canadian and Amarillo Oil Company. (R., V. 1, 455-456)

To finance the several obligations imposed upon Canadian under the three-party agreement of April 5, 1927, i.e., to acquire gas-producing properties, to drill wells, to construct gathering facilities and transmission facilities, and to pay the agreed purchase price of $5,000,000 for the gas leaseholds, rights and wells of Amarillo Oil Company, Canadian issued and sold to Colorado Interstate $11,000,000 principal amount of its 6% First Mortgage Bonds maturing in annual installments of approximately $600,000 through 1947. Out of the proceeds derived from the sale of its bonds to Colorado Interstate, Canadian repaid the $5,000,000 advance made by Standard to finance Canadian's purchase of gas leaseholds, rights and wells from Amarillo Oil Company. (R., V. 1, 406, 462; R., V. 2, 656-685)

Canadian's Cost Contract with Colorado Interstate.

Acting again in pursuance of the obligations imposed upon it under the terms of the three-party project agreement of April 5, 1927, Canadian, for the consideration hereinabove described, entered into a contract with Colorado Interstate as of January 3, 1928, to furnish Colorado Interstate with its natural gas requirements at cost over a period of years. (Ex. 16; R., V. 2, 711-780)

This particular contract is unusual and unique in many

respects. It is not the ordinary contract for the current purchase and sale of natural gas as a commodity, and it is not the ordinary contract that courts or regulatory bodies are called upon to consider when confronted with a challenge to the right of abrogation. Briefly, the Cost Contract, and Canadian's related Trust Indenture (R., V. 2, 656-685) securing its bonds held by Colorado Interstate, require Canadian:

(a) to maintain and renew all its gas leasehold interests, to drill necessary wells, and to construct and maintain necessary pipe line and other facilities in order to supply Colorado Interstate's market at all times with its gas requirements;

(b) to produce, gather, transport and *sell* its gas to Colorado Interstate *at absolute cost* for a fixed period of 20 years, and so long thereafter as Colorado Interstate elects to buy;

(c) to dedicate its gas reserves and facilities to the service of Colorado Interstate's market, with no right to sell or otherwise dispose of its gas or gas properties to others for carbon black, industrial or any other purpose without the consent of Colorado Interstate (except for outstanding commitments to sell gas to Amarillo Oil Company to supply the Amarillo market)[3]; and

(d) to credit Colorado Interstate's cost of gas with any and all revenues, income or profits which it may receive from *any* source, and to continue to operate strictly as a non-profit company for the full term of the Cost Contract.

The cost of gas delivered by Canadian to Colorado Interstate under the Cost Contract is computed by deducting all outside revenues[4] *received by Canadian (including sales of*

[3]Canadian has two outstanding contract obligations to sell gas *at cost*, i.e., (1) to supply all markets of Colorado Interstate, as above described, and (2) to supply the Amarillo market of Amarillo Oil Company, which commitment was in existence long prior to the organization of Canadian and has certain preferential rights over all other markets of Canadian. (R. V. 1, 102; V. 2, 714, 715, 748)

[4]For example, in 1929 Canadian received in excess of $500,000 from the United States Government in final payment of the purchase price for certain helium-bearing leaseholds and wells of Canadian. Since the sum so paid represented revenues received by Canadian, it was likewise credited as a deduction against Colorado Interstate's current cost of gas under the Cost Contract. (R., V. 5, 2723; R., V. 1, 381-401)

gas to others) from the aggregate cost of producing and delivering all gas sold to all purchasers. Such cost includes interest on and amortization of Canadian's funded and other indebtedness, but does not include depreciation and depletion, or retirements.

Thus, it will be seen that for the services to be rendered to it by Canadian under the Cost Contract, Colorado Interstate agreed to underwrite and guarantee Canadian's net cost of operations after crediting profits or income from all other sources, but no more. Moreover, Colorado Interstate was granted direct and complete control over Canadian's costs which it is obligated to reimburse. Obviously, Canadian has not paid, and cannot pay so long as the Cost Contract is in effect, any dividends, earnings or profits in any manner to the owners and holders of its capital stock. This Contract, as above indicated, covers not only Canadian's transmission system, but also its production and gathering properties, facilities and business. Under the Cost Contract Canadian's receipts in any given year can never exceed its actual costs.

Canadian's Trust Indenture provides that in case of default thereunder, in addition to the usual remedies of foreclosure, etc., the Trustee may forthwith take possession of, operate, manage and control the trust estate and, at its discretion, may sell the trust estate to the highest and best bidder "who will assume and perform the obligations of the company" under its Cost Contract with Colorado Interstate. The trust estate *must* be sold in one parcel and as an entity, and the purchaser or purchasers at any sale *must* be required to assume the performance of Canadian's obligations under its Cost Contract with Colorado Interstate.

The Commission's Findings and Order.

As indicated in the statement of questions presented, the Commission's "Order Reducing Rates" in this case, its opinion supporting such order, and the opinion of the Circuit Court affirming such order, raise several important questions which form the basis of this petition. Canadian contends that on a rate regulatory theory or any other theory the

Commission in its various findings and ultimately in its rate reduction order, committed numerous errors of law, constituting violations of the Act itself and which necessarily deprive Canadian of its property without due process in violation of the Fifth Amendment, and that viewed as a whole, the rate reduction order cannot be sustained under the "end result" or "rate impact" principles announced by this Court in the Natural Gas Pipeline and Hope cases. In so far as deemed pertinent at this time, the following additional statements are submitted with respect to the questions involved:

1. *Jurisdiction Over Production and Gathering.*

The Commission avowedly exercised rate regulatory jurisdiction over Canadian's production and gathering properties, business and facilities, notwithstanding the prohibitory provisions of the Act (Sec. 1, Appendix), contending that such action was proper because it was essential to its rate regulatory jurisdiction over interstate transportation and sale. (R., V. 1, 147) The Circuit Court, while ruling against the Commission on this contention, held that what the Commission had done in this case, in so far as production and gathering are concerned, did not constitute the prohibited rate regulation over production and gathering. (R., V. 8, 5073-5075) In this connection Canadian points out:

(a) that the Commission wholly disregarded substantial and uncontradicted evidence with respect to the prevailing market value of Canadian's gas at the wellhead in the field, as well as the prevailing market value of Canadian's gas at the termini of gathering operations in the field (R., V. 1, 140-195); and consequently there was no sound basis for the Commission's contention that rate regulation of production and gathering is necessary to accomplish rate regulation over interstate transportation and sale of natural gas as contemplated by the Act;

(b) that in arriving at its rate reduction order, the Commission determined a rate base which includes not only Canadian's interstate transmission system, but also its production and gathering properties (R., V. 1, 144-195; V. 5, 2717-2721); that in determining its rate base for Canadian's producing and gathering properties, the Com-

mission applied its so-called original cost or prudent investment theories, and in so doing totally ignored both the true value of such properties as well as the actual cost thereof to Canadian; that in its rate base for production and gathering properties, the Commission determined and included an allowance for working capital which it deemed sufficient to enable Canadian to carry on its production and gathering operations, and that likewise the Commission has purported to determine in its rate base for production and gathering properties what additional wells should be drilled and what additional gathering facilities should be installed in the future;[5]

(c) that after finding Canadian's total rate base to be $9,375,000 (R., V. 1, 187), of which approximately two-thirds represents production and gathering properties, (R., V. 5, 2717-2721), (even on the Commission's basis of determining a rate base), the Commission then found that Canadian was entitled to a return of 6½% per annum upon its total rate base (R., V. 1, 187), more than two-thirds of which, as above stated, is attributable to the hazardous business of discovering, exploring, developing and operating natural gas production properties;

(d) that the Commission has determined and made an allowance for Canadian's total annual operating expenses (including depreciation and depletion), the greater portion of which represents the cost of producing and gathering natural gas; (R., V. 1, 171; V. 4, 2341-2345)

(e) that after determining the total annual income of Canadian from all sources, the greater portion of which represents the cost of producing and gathering natural gas under its Cost Contract with Colorado Interstate, the Commission has deducted its determined annual operating expenses (mostly production and gathering) from such total income, and then, after making a return allowance of 6½% upon its determined rate base (mostly production and gathering), it has found an alleged excess income

[5]The Commission deducted $3,864,357 from Canadian's original cost, practically all of which is applicable to leaseholds. (R., V. 1, 149-151) The Commission, through a member of its staff, also offered detailed testimony with respect to the requirements for additional wells and gathering lines. (R., V. 5, 2530-2556)

being received by Canadian, which forms the basis for its rate reduction order; (R., V. 1, 187)

(f) that the Commission's order changes and abrogates the amount of compensation which Canadian is entitled to receive from Colorado Interstate under its Cost Contract, which compensation represents cost reimbursement to Canadian not only for the cost of current deliveries of gas to Colorado Interstate, but for the cost of performing various other services under the Cost Contract relating to Canadian's production and gathering properties and operations, such as the maintenance of leaseholds, the drilling of wells and the construction of gathering facilities as directed by Colorado Interstate; and finally,

(g) that the Commission has treated every element of Canadian's production and gathering properties, facilities and business in precisely the same manner as its interstate transmission properties, facilities and business, and has subjected every element of Canadian's production and gathering facilities to the same rate regulatory measures and procedures as Canadian's interstate transmission properties, facilities and business for the purpose of arriving at its ultimate conclusions with respect to rates and charges; and that if the Commission had sought directly and openly to assume and exercise full and complete rate regulatory jurisdiction over Canadian's producing and gathering properties, facilities and business, it could have done no more than it did do.

2. *Valuation of Canadian's Leasehold Properties.*

In considering Canadian's gas leasehold properties for rate base purposes, the Commission has limited its consideration to the original cost of acquisition, commencing with the leases upon which the first discovery well of Amarillo Oil Company was drilled in 1918. This practice of the Commission purports to limit Canadian generally to a return of 6½% per annum on only the "wildcat" value of its leaseholds while in the hands of predecessor companies, to the exclusion of all discovery, market or other values, notwithstanding the fact that prior to the acquisition by Canadian none of such gas leaseholds had produced gas for interstate transportation, and none of such gas leaseholds had been

devoted to a public use. (R., V. 1, 459; R., V. 5, 2861-2929) Canadian contends (even assuming rate regulatory jurisdiction) that original cost is not the proper basis for the inclusion of gas-producing leaseholds in a rate base, and that the Commission has erred in blindly following its original cost and prudent investment theories with respect to Canadian's gas leaseholds and in wholly disregarding uncontroverted evidence of value.

An analysis of the testimony of Commission witnesses, which the Commission adopted substantially (Ex. 146, Sheets 62-64; R., V. 5, 2717, 2721), shows that the Commission used the sum of $1,604,020.61 as the starting point for its findings as to original cost of or investment in Canadian's leaseholds as of December 31, 1939. Then, as appears from Paragraph 8 of the Commission's formal findings (R., V. 1, 186), a deduction of $653,681 was made for depletion. This means that Canadian's bare leaseholds have been included in the Commission's original cost rate base at a value of something less than $1,000,000.

In adopting this valuation for rate base purposes, the Commission has wholly ignored substantial and uncontradicted evidence that "the present market value of Canadian's leaseholds" (excluding wells) is the sum of $15,646,787.64. This evidence is the testimony of Canadian's witness Wallace. (Ex. 181; R., V. 6, 3181-3254)

The Commission, has found that Canadian's recoverable gas reserves are 2,800,000,000 Mcf. (R., 1, 159) Reducing these figures so found by the Commission to its *value of the gas in place*, it appears that the Commission, in effect, has found the present value of the gas in place to be only 34/1000ths of one cent per Mcf. On a comparative basis, and using Wallace's $15,646,787.64 valuation, as applied to the Commission's finding of 2,800,000,000 Mcf. recoverable reserve, the value of the gas in place is approximately ½c per Mcf.

The original "wildcat" cost to Canadian's predecessors in interest of five important leaseholds, containing approximately 47,000 acres, allowed by the Commission is $4,244.24, which is less than 10c per acre. (R., V. 5, 2735, 2736, 3051) Three of these leases are included *at zero valuation*. The

present fair value of these same five leaseholds (exclusive of wells), as testified to by Wallace with supporting evidence as to such value, was $3,345,923. (R., V. 5, 3237, 3243) A similar situation exists in respect to the Commission's valuation of the remainder of Canadian's leaseholds. (R., V. 5, 3051)

The Commission has wholly ignored all evidence of the market value of gas at the wellhead in the Texas Panhandle Field as a measure of the value of said leaseholds. Canadian's General Superintendent Ford testified that the market value of gas at the wellhead in the Texas Panhandle Field is not less than 4c per Mcf. on a 16.4-pound pressure base, or not less than 3.6c per Mcf. on a 14.65-pound pressure base. (R., V. 6, 3255-3281) This testimony was corroborated by Wallace, and by Commission's Exhibit 168, Sheets 13 and 127. (R., V. 6, 3281.)[6]

3. *Canadian's Original Cost of Leasehold Properties.*

The Commission did not question the fact that Canadian had actually invested in its gas properties the sum of $14,648,821 as of December 31, 1939. It deducted from such actual investment, however, the sum of $3,370,817 on the ground that it represented "affiliated company profits," and in addition thereto the sum of approximately $245,000 interest during construction on such alleged profits. (R., V. 1, 149-151) Virtually the full amount of such deduction arises from the transaction heretofore related, in which Canadian acquired from Amarillo Oil Company all of the latter's gas leaseholds, rights and wells for the sum of $5,000,000 for the purpose of inaugurating the Denver Project in 1928. (See pp. 6-10, supra.) The Circuit Court,

[6] The Commission has found that Canadian's remaining recoverable reserves as of December 31, 1939, are not less than 2,800,000,000 Mcf.; that Canadian's future rate of production will be approximately 55,000,000 Mcf. (14.65-pound pressure base) per year; (R., V. 1, 159); and that on that basis Canadian's recoverable reserves will last for 53 years. The gross value of the 55,000,000 Mcf. to be so produced annually at 3.6c per Mcf. is $1,980,000. The Commission has found (R., V. 1, 171) Canadian's annual operating expenses to be $1,169,096, which includes gathering expense and transmission expense, as well as producing expense. Even if all of this expense, however, be attributed to the production of gas at the wellhead and be deducted from the gross annual value of $1,980,000, there remains a net income of $810,904 for Canadian's gas production in one year, which is almost as much as the Commission has allowed in the rate base for the total of Canadian's leaseholds for all time.

in upholding the Commission in this deduction, stated that the purchase price paid constituted a "synthetic inflation." (R., V. 8, 5082)

The Commission found that Amarillo Oil Company, commencing with its "wildcat" discovery well in 1918, had invested in the properties sold only the sum of $1,879,504, and that this sum should be further reduced by $128,534 by reason of an alleged profit of another predecessor company in a sale of property by it to Amarillo Oil Company (R., V. 1, 150), all of which resulted in a so-called original cost to Amarillo Oil Company of approximately $1,750,000, or $3,250,000 less than the sum actually paid by Canadian in cash for such properties.

Based upon the facts heretofore and hereinafter summarized, Canadian contends that the Record in this case establishes beyond question with respect to this transaction:

(a) that the amount of the purchase price to be paid for such properties, and other terms and conditions of sale, as well as the agreement to buy and sell, were determined and agreed to by the three non-affiliated organizers of the project after prolonged arm's-length bargaining, long before formal consummation of the transaction and even prior to the incorporation of Canadian itself;

(b) that the affiliation between Amarillo Oil Company and Canadian is only nominal, and does not exist in fact or in practice, and in any event did not arise until after the contract to buy and sell was consummated and the entire consideration paid;

(c) that the transaction was not a mere matter of intercompany book entries with no cash changing hands, as is ordinarily the case in a "write-up"; that the $5,000,000 in cash was actually paid by Canadian for its properties, and that such sum represented outside funds advanced by outside interests for that specific purpose;

(d) that the record does not even create an intimation that Canadian paid an excessive price for such properties, but that as a matter of fact the record demonstrates that such property is worth substantially more than the amount paid;

(e) that prior to acquisition by Canadian such properties had not been devoted to a public use or to the transportation or sale of gas in interstate commerce; and

(f) that the application of the Commission's original cost theories to production properties in this instance results in relegating Canadian to the provable cost of its predecessor companies, and denies Canadian any return on over $3,000,000 of its actual cash investment in production properties, as well as the right to recover such sum through the ~~sale of its~~ gas.

4. *Abrogation of the Cost Reimbursement Provisions of the Cost Contract.*

The Commission's purported rate reduction order in this case directs that Canadian's rates and charges "for the transportation and sale of natural gas for resale to Colorado Interstate Gas Company under its FPC Rate Schedule No. 1 shall be reduced by not less than $551,000 per year." (R., V. 1, 188) Canadian's FPC Rate Schedule No. 1, which was filed with the Commission by Canadian with a full reservation of its legal rights, consists of nothing but a copy of the Cost Contract. (R., V. 2, 709) Hence, the Commission's order on its face directs that Colorado Interstate's obligation to reimburse Canadian for its costs under the Cost Contract shall be reduced by the sum of $551,000 per year.

Cost reimbursement received from time to time by Canadian from Colorado Interstate, against which the Commission has aimed its reduction order, represents cost reimbursement to Canadian not only for the gas being currently delivered to Colorado Interstate as a commodity, but for the cost of performing various other obligations and services under the Cost Contract for the benefit of Colorado Interstate and its customers, some of which are clearly beyond the jurisdiction of the Commission, i.e., to acquire, maintain and develop a substantial block of gas leaseholds; to drill and operate wells; to construct and operate gathering facilities; to pay off funded debt in fixed amounts at fixed times; to sell gas to others only as permitted by Colorado Interstate, etc.

Under the operation of its Cost Contract, Canadian receives no revenue from Colorado Interstate except for the purpose of reimbursing it for actual costs incurred under the terms thereof. Its annual revenue is always in exact balance with its annual expenses. If Canadian is to retain its properties and remain solvent, it must receive currently sufficient funds to meet the cost of performing its obligations under the Cost Contract. The Commission by its rate reduction order has reduced the amount of revenue which Canadian is entitled to receive under its Cost Contract by the sum of $551,000 annually, but it did not change or abrogate any other provisions of said Contract or relieve Canadian of any of its obligations which give rise to the necessity for cost reimbursement.

The Cost Contract was made in 1928, long prior to the adoption of the Act, and was substantially performed at the time of the enactment of the Act. Canadian contends that the Commission's rate reduction order as applied to the Cost Contract is unworkable, and that it requires Canadian to do the impossible.

5. *Life of Canadian's Gas Reserves.*

The Texas Panhandle Field in which Canadian's gas reserves are located contains approximately 1,500,000 acres, of which approximately 500,000 acres produce sour gas that is not suitable in its natural state for pipe line use, and approximately 1,000,000 acres produce sweet gas (R., V. 1, 409; V. 7, 3672) Commission witnesses testified that Canadian owned gas leaseholds and gas rights on approximately 222,515 acres in the area of proven gas production (Table R., V. 6, 3669), or approximately one-seventh of the entire Texas Panhandle Field area.

Through the year 1940, pipe lines had utilized but little more than 20% of total field production. Canadian in 1939 produced approximately 41,000,000 Mcf. (R., V. 8, 4703), or about one-fourteenth of the total production for that year, and from the beginning of the field through 1939 Canadian produced approximately 340,000,000 Mcf. (R., V. 8, 4703), or about one-twenty-fourth of total field production, all

from approximately one-seventh of the productive acreage in the entire field.[7]

The record is uncontradicted that the Texas Panhandle Field is definitely a completely interconnected porous reservoir. (R., V. 8, 4753)

"Porous spaces throughout the Field are interconnected." (R., V. 7, 3741)

"It is theoretically possible that a single gas well could eventually drain substantially all of the gas out of the Texas Panhandle Reservoir." (R., V. 8, 4751)

"Drainage inevitably takes place in a gas reservoir comprising an interconnected porous system." (R., V. 8, 4752; also R., V. 8, 4753, 4754, 4755, 4756, 4758, 4760)

Every single witness who made a study of drainage in this case testified unequivocally that Canadian was suffering from drainage and that the life of its reserves for long-distance pipe line purposes could be measured only by the life of the Texas Panhandle Field as a whole. (R., V. 8, 4752, 4760, 4766, 4767) The Commission, however, totally ignored this uncontradicted evidence and computed the life of Canadian's reserves simply by estimating the recoverable reserves in place under Canadian's acreage *as of December 31, 1939,* and then dividing this figure by the estimated annual future production of Canadian. The Commission found from this calculation that Canadian's reserves had a life of 53 years from December 31, 1939. (R., V. 1, 159)

The life of Canadian's reserves for long-distance pipe

[7]The total production for the entire Texas Panhandle Field for the year 1939 and the cumulative field production from the beginning (16.4 pressure base) are as follows:

	Production in Mcf. 1939	Cumulative Field Production in Mcf. From Beginning
Gas used by gas pipe lines	222,299,905	1,887,199,782
Gas used by gasoline and carbon black plants	329,653,273	5,189,824,088
Casinghead gas not treated—blown in air	7,300,000	722,580,000
Gas blown in air and used in drilling wells, etc.	13,026,239	526,391,496
Total	572,279,417	8,325,995,366

(R., V. 7, 8, 4342, 4343, 4345, 4354)

line purposes based upon the highest estimate for recoverable reserves in the Texas Panhandle Field as a whole,[8] adjusted to a 50-pound abandonment pressure and divided by the future estimated annual production from the field as a whole, does not exceed 27 years from December 31, 1939. (R., V. 1, 157; V. 7, 3701; V. 8, 4638, 4646)

Canadian contends that in view of the uncontradicted drainage evidence in this case the Commission's determination of the life of Canadian's reserves was arbitrary and capricious and is wholly unsupported by the record, and therefore that such a determination is a nullity as a matter of law, as has been held in a long line of decisions by this Court. This erroneous and arbitrary action of the Commission necessarily resulted in an insufficient annual allowance for depreciation and depletion expense for Canadian as well as Colorado Interstate.

6. *Canadian's Revenues Available for Return.*

The Commission's order requiring Canadian to reduce its rates and charges by not less than $551,000 per year is based upon an alleged excessive return realized by the Company in the test year of 1939. In computing such alleged excessive return, Canadian contends that the Commission has erroneously, arbitrarily and capriciously, overstated Canadian's annual income available for return in an amount of not less than $114,000, which sum constitutes a part of the reduction ordered by the Commission, as is shown by the following:

(a) Under its Cost Contract, Canadian receives revenue only for its actual out-of-pocket cash expenditures, and therefore its accounts have been kept on a cash basis—not on an accrual basis. In computing Canadian's allowable costs, the Commission determined and restated Canadian's cash expenditures for the test year of 1939 on an *accrual* basis, and in so doing eliminated therefrom actual cash expenditures in the amount of $72,600, on the ground that such expenditures, although made in 1939, were applicable to the business of prior years. This sum is made up of two adjustments made by the Commission.

[8]This is the estimate of the Commission's Witness Hammer, which the Commission has said is too high. (R., V. 1, 157, 158)

Canadian actually paid federal income taxes during the year 1939 in the sum of $125,441. The Commission adjusted such taxes downward on an accrual basis to the sum of $66,403. (R., V. 1, 167; V. 6, 3432, 3457) This "adjustment" necessarily eliminated from Canadian's actual cash expenditures for that year the sum of $59,038 and understated Canadian's expense by that amount. Again, Canadian actually paid as rate case expense during the year 1939 the sum of $54,600. (R., V. 6, 3407, 3447) The Commission adjusted this cash expenditure downward on an accrual basis to $41,000 (R., V. 1, 166-167), and in so doing reduced Canadian's actual expenses for that year by $13,600. Assuming that this all was proper accounting on an accrual basis, the Commission, to be consistent, should also have determined and restated Canadian's revenues for the year 1939 on an *accrual* basis, which would have resulted in an offsetting deduction of $72,600 from such revenues, if revenues and expenses had been stated on a comparable basis, for the reason that Canadian's revenues are measured entirely in terms of cash required to meet current expenses. The Commission's failure to do so overstated Canadian's operating revenues by the amount of $72,600, and as a consequence thereof its net revenue available for return was overstated by a like amount.

(b) The Commission further overstated Canadian's income available for return by deducting from Canadian's 1939 operating expenses the sum of $15,056.24 because such sum was alleged to be a profit made by an affiliate (Amarillo Oil Company) through the extraction of gasoline from gas purchased by it from Canadian. (R., V. 6, 3425) Amarillo Oil Company purchases gas from Canadian for the Amarillo, Texas, market under a contract dated January 3, 1928, which provides expressly that Amarillo Oil Company shall receive title to and possession of such gas *in its natural state* as produced at Canadian's wells. As a part of Amarillo Oil Company's operation of transporting such gas from the wellhead to the City of Amarillo, the gas is processed for gasoline extraction by a non-affiliated company pursuant to the terms of a contract entered into by Amarillo Oil Company

over 20 years ago. The gas in question is produced, sold, transported, processed for gasoline extraction and consumed entirely within the State of Texas by parties which have nothing whatever to do with the operations of Canadian. The Commission's action in this respect resulted in an understatement of Canadian's actual operating expenses for the test year of 1939 in the amount of $15,056.24, and as a consequence thereof overstated Canadian's income available for return for that year in a like amount.

(c) The Commission failed to take into account increases in gross production taxes levied by the State of Texas subsequent to the termination date of the hearing, but long prior to the date of the rate reduction order, and in so doing failed to allow a minimum of $26,350 as a necessary operating expense. As a consequence thereof, the Commission has overstated Canadian's income available for return in this amount.[9]

7. *Depreciation as an Annual Operating Expense:*

The Commission allowed Canadian as an annual operating expense the sum of $80,969 for depletion and $157,774 for depreciation. (R., V. 1, 171). It allowed nothing for amortization as such. On this basis Canadian will accrue in its depreciation and depletion reserve during the remaining physical service life of its properties (38 years, as found by the Commission) the total sum of $9,072,234, plus accrued depreciation and depletion of $2,134,629 from 1928 to 1939, inclusive, (as determined by the Commission, R., V. 1, 164), or a total sum of $11,206,863, which is less than Canadian's original cost as of December 31, 1939, and capital additions to December 31, 1941, in the amount of

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[9]Canadian in the year 1939 paid a gross receipts tax or gas production tax on the natural gas it produced in the sum of $34,220.09, (R., V. 6, 3457), which tax was computed on the basis of 3% of the value of the gas at the well, less 2% for gas loss, being net tax of 2.96%. (Chap. 495, Art. 4, Sec. 8, 3rd Called Session of the 44th Texas Legislature.) This tax act was amended, effective May 1, 1944, after the close of this hearing, but long before the Commission handed down its opinion on March 18, 1942. The new Act provided for a tax of 5.2%. (H. B. 8, Chap. 184, Acts of 47th Texas Legislature, Regular Session, 1941, p. 269.) The Commission allowed as an operating expense the gross receipts tax paid for 1939 and gave no effect to the increase in such taxes. The amended act increased Canadian's taxes, measured by the 1939 volume of production, approximately $26,350.

$11,356,387 (as allowed by the Commission, R., V. 1, 164). The salvage value will be negligible. (R., V. 3, 1757)

Based upon the most favorable testimony in the Record in support of the Commission's theory of depreciation (R., V. 8, 4944-4946), Canadian will be required to expend a minimum of $6,500,000 to make replacements of physical equipment which will have been worn out and retired prior to the end of the service life period adopted by the Commission.[10]

The average service life of virtually all of Canadian's physical property shown in footnote 10 below will have expired long before the termination of the 50-year average service life period which has been assigned by the Commission to the transmission system comprised mostly of main pipe line. It is reasonable to assume that one-half of the main pipe line will require replacement prior to the end of the assigned service life of 50 years, but if only approximately one-fourth of it is replaced, the total replacements for all types of physical property will aggregate approximately $6,500,000.

There has been no allowance made to accrue a fund for such replacements. They can only be made out of the depreciation reserve, which will leave such reserve inadequate by approximately $6,500,000 if Canadian's original cost as determined by the Commission (which is substantially less than its actual investment) is to be returned at the end of the life of the enterprise.

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[10] The testimony given by a Commission witness which formed the predicate for the Commission's depreciation allowance, excluding non-depreciable items such as leaseholds, rights of way and other real estate, with adjusted book costs as determined by the witness, is briefly summarized as follows: (R., V. 8, 4944-4946)

Character of Property	Adjusted Book Cost 12/31/39	Service Life Years
Well Construction Costs and Equipment	$3,029,610.61	39
Field Lines	1,229,760.29	40
Other Field Facilities	78,225.47	Approx. 24
Gasoline Investment	350,239.94	" 30
Main Line Compressor Station	632,258.38	" 36
Bivens Camp	185,425.85	" 35
Transmission System	2,444,754.50	50
Dehydration Plant	41,332.45	" 26
Measuring Stations	18,923.32	" 32
General Property	175,677.93	4 to 35
Total	$8,186,208.74	

Canadian contends that under an unbroken line of decisions by the state and federal courts a gas company of limited life is entitled to a depreciation and amortization charge sufficient to keep its plant at 100% operating efficiency, as nearly as it is possible to do so, and in addition thereto, a sum that will refund the capital investment, including replacements, within the life of the business.

8. *Allocation Errors.*

The Commission made no allocation of Canadian's property with respect to gas sold by Canadian to Colorado Interstate for "direct sale" and gas sold by Canadian to Colorado Interstate for "resale"; and likewise it made no allocation between interstate and intrastate sales by Canadian. The Commission in determining the cost of service from a rate regulatory viewpoint considered all of the properties and operating expenses of Colorado Interstate, as well as all of the properties and operating expenses of Canadian, and applied its allocation formula to the combined properties and operating expenses of both companies, thus treating both companies as one composite system. (R., V. 4, 2317-2363)

In 1939, Canadian sold to Colorado Interstate at Clayton Junction for resale, 10,974,156 Mcf. and for direct sale and for Colorado Interstate's own use, which was not subject to rate regulatory jurisdiction of the Commission, 10,158,353 Mcf. Canadian also sold to Colorado Interstate for resale at Gray, Oklahoma, 20,783,301 Mcf. (R., V. 4, 2319), (all on a 14.65 pressure base). Approximately one-fourth of the gas sold to Colorado Interstate, therefore, was sold by it directly to industrial consumers. The Commission, however, made a blanket reduction of $551,000 with respect to all gas sold by Canadian to Colorado Interstate. In doing so the Commission completely ignored the fact that one-fourth of such gas was sold for direct sale to industrial consumers over which it had no jurisdiction under the terms of the Act and completely ignored the fact that in determining the cost of service from a rate regulatory viewpoint it considered all of Canadian's and Colorado Interstate's properties as constituting one composite system.

Canadian contends that in view of the express provisions

of the Act, as applied to the facts in this case, the Commission has no rate regulatory jurisdiction over that portion of the gas sold by Canadian to Colorado Interstate which was, in turn, sold by the latter company to direct industrial consumers and not for resale. Canadian contends also, that since the Commission in applying its rate making allocation formula made no allocation of properties as between Canadian and Colorado Interstate, but considered the two companies as constituting one system, it necessarily follows, in any event, that no reduction in rates should have been made as to the gas sold to Colorado Interstate for direct sale to industrial consumers. Such sales comprised approximately one-fourth of all the gas sold to Colorado Interstate. Canadian further contends that the failure to make any allocation of properties at all is contrary to the decisions of this Court, and unlawfully burdens non-regulable sales.

REASONS FOR GRANTING THE WRIT.

Question 1. Exercise of Prohibited Rate Regulatory Jurisdiction Over Canadian's Production and Gathering. Section 1 (a) of the Act declares "that the business of *transporting and selling* natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the *transportation* of natural gas and the *sale* thereof in interstate and foreign commerce is necessary in the public interest."

Section 1 (b) of the Act then provides that its provisions shall apply to such interstate transportation and sale "*but shall not apply to* any other transportation or sale of natural gas or to the local distribution of natural gas, or to the facilities used for such distribution or to *the production or gathering of natural gas.*" (Appendix, p. 45) (Italics supplied)

In both the Natural Gas Pipe Line case and the Hope case, this Court approved the actions of the Commission only because the Commission was found to have acted within the "ambit of its authority."

In the Hope case this Court stated:

"As we have said, the Act does not intrude on the domain traditionally reserved for control by state commis-

sions; and the Federal Power Commission was given no authority over 'the production or gathering of natural gas.'"

The Commission held, notwithstanding the prohibitory provisions of the Act, that it did have rate regulatory jurisdiction over Canadian's production and gathering properties, facilities and business, and that such jurisdiction was essential to its rate regulatory jurisdiction over interstate transportation and sale of natual gas, and avowedly the Commission exercised such assumed jurisdiction. (R., V. 1, 147) The uncontradicted evidence in this case establishes a commodity market value for Canadian's natural gas at the wellhead in the field and at its gathering system termini. (R., V. 6, 3255-3281) *The Commission could have used this commodity value of Canadian's gas as the starting point for the exercise of its delegated jurisdiction over interstate transportation and sale and avoided any usurpation of prohibited jurisdiction over production and gathering.*

The Circuit Court in the present case overruled the Commission in its contention that it does have rate regulatory jurisdiction over production and gathering but then ruled that what the Commission had done in this case did not constitute prohibited rate regulation of Canadian's production and gathering properties, facilities and business. (R., V. 8, 5075)

In view of the facts set forth in the Statement, it is submitted that the opinion and ruling of the Circuit Court to the effect that the various steps taken by the Commission in arriving at its rate reduction order, and the rate reduction order itself, do not constitute an exercise of prohibited rate regulatory jurisdiction over Canadian's production and gathering properties, facilities and business, are not consistent with, or supported by, the Record, and serve only as a convenient whitewash for a direct violation of the express provisions of the Act; that in holding that the action of the Commission in this case does not constitute an exercise of rate regulatory jurisdiction over Canadian's production and gathering properties, facilities and business, the Circuit Court has decided a federal question in a way not only in conflict with the facts and the Act, but also probably in conflict with the Hope and Natural Gas Pipe Line decisions

of this Court; that in so ruling the Circuit Court has decided an important question of federal law which has not been, but should be, settled by this Court; and likewise in so ruling, the Circuit Court has so far departed from the accepted and usual course of procedure, and has so far sanctioned such departure by the Commission, as to call for an exercise of this Court's power of supervision.

The question presented here is whether the Commission in the exercise of its rate regulatory powers can, without violating the prohibitory provisions of the Act, include production and gathering properties in its rate base; apply its original cost or prudent investment theories to such production and gathering properties for rate base purposes; determine operating expenses, depreciation and depletion for such production and gathering properties; abrogate the cost reimbursement provisions of a contract relating to such production and gathering properties; include such production and gathering operations in its cost of service allocation; determine what is a fair rate of return on its rate base which is primarily composed of such production and gathering properties, and, in fact, exercise every rate regulatory function which can be possibly exercised by a rate regulatory commission under an express grant of jurisdictional authority. It is submitted that the question thus presented is of great importance, not only to the natural gas industry as a whole and the Commission, but to the public as well. It is also a question which must necessarily arise in numerous cases in the future. A similar or related question concerning jurisdiction over production and gathering is presented to this Court in the petition for certiorari filed herein (October Term, 1944) in the case of *Panhandle Eastern Pipe Line Co., et al. v. Federal Power Commission, et al.*

Question 2. The Commission's Valuation of Canadian's Leasehold Properties. In avowedly exercising rate regulatory jurisdiction over Canadian's production and gathering properties, facilities and business in this case, the Commission has included Canadian's gas leaseholds in its rate base at original cost of acquisition, which results generally in limiting Canadian to a return of 6½% per annum on only the "wildcat" value of such leaseholds while in the hands of predecessor companies prior to discovery and development

over 20 years ago. In adopting this procedure, the Commission has wholly disregarded and excluded all evidence as to Canadian's actual original cost of such leaseholds, as well as all evidence as to the true value thereof, such as their fair market value, as established by uncontradicted evidence, and their value, as measured by the market value of Canadian's natural gas at the wellhead in the field, likewise established by uncontradicted evidence.

Neither the Commission nor the Circuit Court in their respective opinions gave any consideration or made any reference to the uncontradicted evidence in the Record establishing the value of Canadian's leaseholds. The Circuit Court in its opinion impliedly treated gas leaseholds as falling in the same category as ordinary physical property for rate base valuation purposes. It is Canadian's contention that even though original cost may be held to be the proper basis for inclusion of the ordinary classes of property in the rate base of a regulated utility, original cost (and particularly original "wildcat" cost to predecessor companies) is entirely inappropriate for rate base purposes when applied to gas leaseholds and cannot result in a fair valuation and return, either from the viewpoint of the owner of the leaseholds or of the public, and must necessarily deprive the owner of his property without due process in violation of the Fifth Amendment. The natural gas produced from a leasehold costing $1,000,000 has the same commodity value (and is of the same value to the consuming public) as natural gas produced from an adjacent leasehold costing $100,000, and the difference in the cost of the leaseholds cannot justify a return to the million dollar investor ten times larger than that granted to the $100,000 investor.

The Circuit Court, without discussing this question relating to gas leaseholds, stated that it felt bound to approve the Commission's original cost rate base because of the opinions of this Court in the Natural Gas Pipe Line and Hope cases. (R., V. 8, 5079-5081) It is submitted that, even assuming, *arguendo*, the Commission has rate regulatory jurisdiction over Canadian's production and gathering properties, facilities and business, the action of the Commission in including Canadian's leaseholds in its rate base at original cost of acquisition (in most instances to predecessor

companies), and the opinion of the Circuit Court affirming such action, are not justified by, but are in conflict with, the provisions of the Act; that the Circuit Court has decided a federal question in a way probably in conflict with the Hope and Natural Gas Pipe Line decisions of this Court, as well as a long line of earlier decisions of this Court, ending with the case of *Los Angeles Gas & Electric Corp. v. Railroad Commission*, 289 U. S. 287; that the action of the Commission in this respect, and the affirmance by the Circuit Court, deprive Canadian of its property in violation of the Fifth Amendment; that the Circuit Court has decided an important question of federal law which has not been, but should be, settled by this Court, and likewise has so far departed from the accepted and usual course of procedure, and has so far sanctioned such departure by the Commission, as to call for an exercise of this Court's power of supervision. It is of great importance, not only to Canadian and the natural gas industry as a whole, but also to the public, that the scope of the administrative powers of the Commission in this respect be finally determined. The "rate impact" or "end result" effect of the actions of the Commission and the Circuit Court in this matter is further referred to in connection with Question 9.

Question 3. Canadian's Actual Original Cost of Leasehold Properties. It has been pointed out in Question 2, supra, that original cost is not the proper basis for inclusion of gas producing leaseholds in a rate base, even though it be assumed, *arguendo*, that the Commission has rate regulatory jurisdiction over such leaseholds. If it be further assumed, *arguendo*, that this contention is invalid and that original cost is the proper basis for inclusion of such leaseholds in a rate base, then the Commission in this case, with the affirmance of the Circuit Court, has arbitrarily and erroneously deprived Canadian of more than \$3,000,000 of its *actual and legitimate original cost* of such leaseholds for the reasons set forth in the Statement, pp. 6 to 19, supra. This elimination of more than \$3,000,000 of Canadian's actual cash cost and investment in gas-producing properties is arbitrary and therefore is condemned by an unbroken line of decisions of this Court.[11]

[11]Northern Pacific Ry. Co. v. Department of Public Works, 268 U. S. 39, 44-45.

There is no finding by either the Commission or the Circuit Court that Amarillo Oil Company had ever devoted the properties sold to a public use,[12] and a finding to this effect could not be sustained on the Record; but even if this were not true, still there is no basis in the Act, or in this Court's opinions in the Hope and Natural Gas Pipe Line cases, for the elimination from the so-called prudent investment rate base of any portion of the $5,000,000 actually paid by Canadian in cash for the gas producing properties purchased from Amarillo Oil Company. It is not even intimated that the consideration was excessive. The record supports a much higher figure as to its actual value.

This Court has said in the Natural Gas Pipe Line and Hope cases that the Commission is not restricted to any particular formula or combination of formulas in arriving at a rate base. These opinions, however, clearly contemplate that the formula or combination of formulas adopted by the Commission shall bear some reasonable relationship to value and to the admitted facts in any given case. This is clearly demonstrated in the concurring opinion in the Natural Gas Pipe Line case wherein it is stated: "The Commission has a broad area of discretion for selection of an appropriate rate base. * * * Various routes to that end may be worked out by the expert administrators charged with the duty of regulation. * * * *The decision in each case must turn on considerations of justness and fairness which cannot be cast into a legalistic formula.*" (pp. 606-607) (Italics supplied.)

The "legalistic formula" adopted by the Commission for inclusion of Canadian's leaseholds in its rate base has re-

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Interstate Commerce Commission v. Union Pacific RR. Co., 222 U. S. 541, 547.
U. S. v. B. & O.S.W. RR. Co., 226 U. S. 14, 20.
Interstate Commerce Commission v. L. & N. RR. Co., 227 U. S. 88, 91.
Florida E. Coast Ry. Co. v. U. S., 234 U. S. 167, 185.
United States v. Abilene and S. Ry. Co., 265 U. S. 274, 288.

[12]The Commission does make an offhand reference, which hardly reaches the dignity of a finding, that Master Oil and Gas Company and Mission Oil Company (both predecessor companies of Canadian) had devoted their properties to a public use prior to the acquisition by Canadian. (Commission Opinion R., V. 1, 150.) This offhand statement, however, is not even supported by the record. Master Oil and Gas Company had never sold any gas from its properties prior to the acquisition thereof by Canadian (R., V. 5, 2801, 2802), and the record is entirely silent with respect to any sales by Mission Oil Company.

sulted in the assignment of a zero valuation to some of Canadian's most valuable leaseholds and a value of only 10 cents per acre to a still greater block of important leaseholds. The undisputed testimony in the Record demonstrates that these leaseholds were worth many millions of dollars, exclusive of the wells. Clearly the Commission's "legalistic formula" in this case does not meet any test of "justness and fairness."

It is submitted that the action of the Commission, and the affirmance of such action by the Circuit Court, in eliminating more than $3,000,000 of Canadian's actual cash investment in its gas producing properties from its rate base, and denying Canadian any return on such sum, as well as the right to recover such sum through the sale of gas, violates the provisions of the Fifth Amendment and the Act and is probably contrary to the decisions of this Court in the Hope, Natural Gas Pipe Line and other applicable cases hereinabove referred to. It is also submitted that the question here involved presents a federal question of great and far-reaching importance which has not been, but should be, settled by this Court; that the Commission in its action, and the Circuit Court by its affirmance of such action, have so far departed from accepted procedures as to call for an exercise of this Court's power of supervision.

Question 4. Abrogation of Cost Reimbursement Provisions of Canadian's Cost Contract. The pertinent provisions of this Cost Contract are summarized and the action of the Commission ~~in~~ abrogating the cost reimbursement provisions thereof are analyzed in the Statement supra, (pp. 10-12 and 19-20). While under the Contract Canadian's total revenues can never exceed, but must always be in exact balance with, its costs, the Commission has purported to reduce the amount which Canadian shall be entitled to receive under the Contract by $551,000 annually, without relieving Canadian from any of its obligations under the Contract which render full cost reimbursement imperative. The effect of the Commission's order is that Canadian will be short $551,000 annually in the amount necessary to defray the cost of performing its obligations under the Contract.

The Circuit Court's affirmance of the Commission's action (R., V. 8, 5075-5078) is erroneous, deprives Canadian of its

properties without due process in violation of the Fifth Amendment, violates the provisions of the Act and is probably in conflict with the Hope and Natural Gas Pipe Line and other applicable decisions of this Court in that:

(a) The Circuit Court misconstrues the statement of this Court in the Natural Gas Pipeline case (p. 590), "but regulation does not insure that the business shall produce net revenues, * * *," as meaning that a rate reduction order can be sustained where it absolutely forecloses the possibility of net revenues;

(b) Any general power to abrogate contracts made prior to the adoption of the Act must be exercised in a manner consistent with the due process clause of the Fifth Amendment. *Monongahela Navigation Co. v. United States*, 148 U. S. 312; *United States v. Chicago, Milwaukee, St. Paul & Pacific R. R. Co.*, 282 U. S. 311; *Dubuque & Sioux City R. R. Co. v. Richmond*, 19 Wall. 173; *Great Northern Utility Co. v. Public Service Comm.*, 52 Fed. (2d) 802; *United States v. Seven Oaks Dairy Co.*, 10 Fed. Supp. 995;

(c) Passage of the Act did not automatically overthrow Canadian's Cost Contract and the rates and charges under that Contract could be changed only after an express finding of unreasonableness supported by substantial evidence. *Wichita Railroad & Light Co. v. Public Utilities Comm.*, 260 U. S. 48; *Allen W. Hinkle Dry Goods Co. v. Wichison Industrial Gas Co.*, 64 Fed. (2d) 881. In this case the Commission's finding of unreasonableness of the rates under the Cost Contract is not supported by substantial evidence.

(d) The Circuit Court has misconstrued its judicial functions in this review under Section 19(b) of the Act and has affirmed the Commission without any analysis of the Cost Contract or the ultimate and inevitable effect of the Commission's action thereon.

(e) The action of the Commission, particularly in abrogating only the cost reimbursement provisions of the Cost Contract and leaving Canadian obligated to perform all the obligations of the Contract, but depriving it of the revenues necessary to such performance, is an arbitrary

and capricious exercise of any general power to abrogate contracts, in violation of the Fifth Amendment. *Nashville, Chattanooga & St. Louis Ry. v. Walters*, 294 U. S. 405; *Nebbia v. New York*, 291 U. S. 502; *Yick Wo v. Hopkins*, 118 U. S. 356.

The only attempted answer of the Circuit Court to Canadian's contentions is that Canadian received $5,000,000 initially in cash from Standard and that Southwestern acquired a portion of Colorado Interstate's common and preferred stock, and is entitled to participate in Colorado Interstate's net earnings. The Circuit Court then states: "Taking these and other factors into account, there is no basis for challenging the order on the ground that it exacts the impossible and is confiscatory." (R., V. 8, 5078) What the "other factors" are which the Circuit Court took "into account" cannot be ascertained from the Court's opinion. In any event, the Circuit Court's reasoning is definitely specious and its conclusions are clearly erroneous in that:

(a) Canadian, as a wholly-owned subsidiary of Southwestern which is kept separate and apart from the latter's other companies and projects in accordance with the original project agreement, did receive temporarily the benefit of a $5,000,000 cash advance by Standard to pay the purchase price for its gas leaseholds, rights and wells with which to commence the Denver Project, but that sum was paid to Amarillo Oil Company for such properties before Canadian was incorporated and the advance was subsequently repaid in cash by Canadian to Standard through Colorado Interstate out of the purchase price for Canadian's First Mortgage Bonds, which were issued and sold, in part, for that purpose; and

(b) The $5,000,000 purchase price can have no pertinency whatsoever to this question except upon the questionable theory that a portion thereof constituted a profit between affiliated companies, which contention is answered elsewhere. Even on such theory "profits of the past cannot be used to sustain confiscatory rates for the future." *Board of Public Utilities Commissioners v. New York Telephone Co.*, 271 U. S. 23, 30.

(c) In any event there can be no justification for a

theory that Southwestern, as the owner of less than one-half of Colorado Interstate's outstanding capital stock, should bear 100% of the burden of meeting deficits created by the Commission under Canadian's Cost Contract in connection with the production, gathering, transportation and delivery of gas for the benefit of Colorado Interstate.

The affirmance by the Circuit Court of the Commission's abrogation of the cost reimbursement provisions of Canadian's Cost Contract deprives Canadian of its property in violation of the Fifth Amendment and is in violation of the provisions of the Act. The Circuit Court, in affirming the Commission, has decided an important question of federal law which has not been, but should be, settled by this Court, and has so far departed from the accepted and usual course of procedure, and has so far sanctioned such departure by the Commission, as to call for an exercise of this Court's power of supervision. The opinion of the Circuit Court is in conflict with the applicable decisions of this Court and with the decisions of other Circuit Courts of Appeal hereinabove referred to.

Question 5. Life of Canadian's Reserves. This question presents a proposition of law. For the purposes of this petition, the accuracy of the various estimates of gas reserves and the methods employed as the basis of such estimates, are not attacked. Moreover, for the purpose of the argument, the very highest applicable reserve estimate is accepted.

Five witnesses in this case testified unequivocally and *without contradiction* that due to the effects of drainage the life of Canadian's gas reserves for long distance pipe lines could be measured only by a determination of the life of the field as a whole. Witnesses for the Commission made no definite study of drainage (R., V. 6, 3640-3641; R., V. 7, 3738-3739, 4002, 4042, 4045, 4072, 4074), and made no effort to refute such testimony.

The Commission ignored this uncontradicted testimony and computed the life of Canadian's reserves not by considering the life of the field as a whole, but by considering only estimated reserves in place under Canadian's acreage

and the estimated future production therefrom. It gave no consideration to the question of drainage from Canadian's acreage or to production from other portions of the interconnected reservoir. Had the Commission considered Canadian's recoverable reserves in connection with the field as a whole, its finding for the life thereof would have been not more than 27 years from December 31, 1939, instead of 53 years from such date, as found by the Commission. Twenty-seven years is the maximum life of Canadian's reserves based upon the estimate of total field reserves submitted by a Commission witness, which is the highest in the Record.

It is true that both the Commission and the Circuit Court agreed generally that drainage should be taken into account in making reserve estimates. This statement of principle, however, does not answer the question here presented. This question does not concern estimates of gas reserves in place, but is directed to the determination of the life of such reserves, which involves many additional factors. The method utilized by the Commission in computing the life of only one segment (Canadian's acreage) of an interconnected reservoir, where all of the gas can be produced by one well and where drainage is definitely present, finds no support in the Record but is affirmatively condemned by the Record.

Mr. Justice Brandeis has said:

> "An order based upon a finding made without evidence, or *a finding made upon evidence which clearly does not support it*, is an arbitrary act against which courts afford relief * * *." (Italics supplied.) *Northern Pacific Ry. Co. v. Dep't Public Works*, 268 U. S. 39, 44-45.

This same principle is also announced by other decisions of this Court.[13]

The finding of the Commission with respect to the life of Canadian's reserves, which finding resulted in an insuf-

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[13]Interstate Commerce Comm. v. Union Pac. R. R. Co., 222 U. S. 541-547.
U. S. v. B. & O. S. W. R. R. Co., 226 U. S. 14, 20.
Interstate Commerce Comm. v. L. & N. R. R. Co., 227 U. S. 88, 91.
U. S. v. Abilene & S. Ry. Co., 265 U. S. 274, 288.
Florida E. Coast Ry. Co. v. U. S., 234 U. S. 167, 185.

ficient allowance for depreciation and depletion, and the failure of the Circuit Court to set aside such finding, is in conflict with the decisions of this Court hereinabove referred to.

Question 6. Canadian's Revenues Available for Return. It requires nothing but a few simple arithmetical computations to demonstrate conclusively that the Commission has overstated Canadian's annual revenues available for return by not less than $114,000, as is shown in the Statement. (pp. 22 to 24 supra.) This overstatement is reflected in, and becomes a part of, the rate reduction ordered in exactly the same sum. Along with many other questions, the Circuit Court apparently dissolved this glaring error in its over-all conception of the "end result" and "rate impact" principles announced by this Court in the Hope and Natural Gas Pipeline cases. We submit that this is no answer to the question presented. Since there is no basis in the Record for the Commission's action in this respect such action was wholly arbitrary and, therefore, is condemned by, and is in conflict with, the applicable decisions of this Court,[14] including the Hope and Natural Gas Pipeline cases.

Question 7. Depreciation as an Annual Operating Expense. This question raises one of the fundamental distinctions between a regulated natural gas business of limited life and other regulated businesses having an unlimited life.

Various Circuit Courts of Appeal and other courts have recognized this distinction, and have held that a natural gas company is entitled to an annual allowance for amortization over and above the allowance for depreciation as such. This allowance must be sufficient not only to make necessary replacements and to keep the physical properties in 100% operating efficiency as nearly as it is possible to do so, but also to return to the company its total investment at

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[14]Northern Pacific Ry. Co. v. Department of Public Works, 268 U. S. 39, 44-45.
Interstate Commerce Comm. v. Union Pac. R. R. Co., 222 U. S. 541-547.
U. S. v. B. & O. S. W. R. R. Co., 226 U. S. 14, 20.
Interstate Commerce Comm. v. L. & N. R. R. Co., 227 U. S. 88, 91.
U. S. v. Abilene & S. Ry. Co., 265 U. S. 274, 288.
Florida E. Coast Ry. Co. v. U. S., 234 U. S. 167, 185.

the end of the life of the enterprise.[15] These decisions have been approved in principle by this Court.

The Commission completely ignored this principle and has allowed a sum that will not be sufficient to return the invested capital, even on the basis of the Commission's determination, at the end of the service life period fixed by it. It has made no allowance whatsoever to cover replacements in the amount of aproximately $6,500,000, which will be required during the life of the enterprise, as is shown in the Statement. (pp. 24 to 26 supra)

This question was likewise not discussed by the Circuit Court. The action of the Commission, and the Circuit Court's silent affirmance of the same are in conflict with the applicable decisions of other Circuit Courts of Appeal and of this Court, hereinabove referred to.

Question 8. Allocation Errors. Sections 1(a) and 1(b) of the Act provide only for the regulation of rates with respect to the transportation and sale of gas in interstate commerce "for ultimate public consumption." Approximately one-fourth of the gas sold by Canadian to Colorado Interstate is not sold for "ultimate public consumption," but for resale to direct pipe line industrial consumers. These sales are not now subject to regulation by the Commission or any other rate regulatory body. Such reduction, therefore, does not enable the Commission to reduce the rates of Colorado Interstate to such customers by a single penny. It is thus apparent that the reduction in the rates for such gas sold by Canadian to Colorado Interstate, which reduction is in excess of $137,500 per annum, not only serves no useful purpose whatsoever, but represents an attempt by the Commission to regulate transactions over which it has no jurisdiction.

[15] United Fuel Gas Co. v. Public Service Comm. of W. Virginia, 14 Fed. (2d) 209-11. (Affirmed without discussion of this point, 278 U. S. 322.)

United Fuel Gas Co. v. Railroad Comm., 13 Fed. (2d) 510, 518. (Affirmed without discussion of this point, 278 U. S. 300.)

Oklahoma Natural Gas Co. v. Corporation Comm., 90 Okla. 84; 216 Pac. 917, 923-924.

People ex Rel. Pennsylvania Gas Co. v. Public Service Comm., 204 App. Div., 73 (N. Y.)

Landon v. Public Utilities Comm., 242 Fed. 658. (Reversed on other grounds, 249 U. S. 236.)

This purported rate reduction is also erroneous, as well as inconsistent and contradictory, because the Commission in the development of its "allocation of cost of service" formula considered Canadian and Colorado Interstate as one composite system. The Commission made no effort to segregate transportation costs and determine such costs for each company as a separate entity. This being true, there is no basis in any event for the reduction in rates for gas sold to direct industrial consumers from a single composite system.

The Circuit Court overruled this contention without discussion. The action of the Commission and affirmance of such action by the Circuit Court are erroneous under the facts of this case, as shown in the Statement. (pp. 26-27, supra) The question presented raises an important question of federal law in determining the scope of the Commission's administrative powers under the Act, which will likely arise in other cases and which has not been, but should be, settled by this Court.

In the companion case Colorado Interstate elaborates on the additional contentions that the decisions of this Court require a separation of property, which the Commission and the Circuit Court admit was not done in this case; and that even if the Commission's "allocation of cost of service" is a valid substitute for the separation of the property itself and could be approved (which is denied), no "end result" formula such as was approved in the Hope case can possibly excuse the flagrant errors in its application in this case. In order to avoid repetition, reference is hereby made to the petition and brief of Colorado Interstate upon this subject and your petitioner relies upon the facts stated and the argument made therein.

Question 9. The "End Result" and "Rate Impact" Principles Announced in the Natural Gas Pipe Line and Hope Cases. In affirming the Commission's rate reduction order, the Circuit Court relies almost entirely upon the Hope and Natural Gas Pipeline decisions of this Court. Canadian submits that the Circuit Court's opinion is in conflict with such decisions, and that, when viewed as a whole, the Commission's order cannot be sustained as being

just and reasonable or in the public interest in the light of the requirements of the Act and the "end result" and "rate impact" principles announced by this Court in the Natural Gas Pipeline and Hope cases, where it appears from the Record that such order of the Commission, among other things, results in the following:

(a) The assumption of full and complete rate regulatory jurisdiction over production and gathering properties, facilities and business which has been expressly withheld by Congress;

(b) The absolute denial of actual cost, discovery, market and all other values of gas leaseholds for rate base purposes, except provable capital expenditures of predecessor companies commencing with the first "wildcat" or discovery well drilled over 25 years ago;

(c) The nullification of the cost reimbursement provisions of a Cost Contract entered into over 15 years ago for the purpose of dedicating and perpetuating substantial gas reserves and properties to the service of the Denver pipe line market *at cost* for a period of years, thereby leaving Canadian in an impossible situation to perform its contract obligations;

(d) The enforced default of Canadian not only in its Cost Contract obligations, but its funded debt obligations, notwithstanding the fact that Canadian is operated as a non-profit company and has not had, and will not have, any earnings or profits for distribution to its owners, so long as the Cost Contract remains in effect;

(e) An allowance for annual depreciation and depletion based upon a 53-year assumed life of Canadian's gas reserves, whereas the evidence will not support a finding of a life of Canadian's recoverable reserves in excess of 27 years;

(f) An erroneous, arbitrary and capricious overstatement of Canadian's annual income available for return in the amount of $114,000, which is reflected in the rate reduction order and deprives Canadian of that amount annually;

(g) A failure to grant depreciation allowances sufficient to permit Canadian to recover approximately $6,500,000 for replacements which will necessarily have to be made long prior to the 50-year service life period adopted by the Commission; and

(h) A reduction in Canadian's annual income by not less than $137,500 annually through the Commission's application of its cost of service allocation theories which, among other things, assumes jurisdiction over that portion of Canadian's gas sold by Canadian to Colorado Interstate which Colorado Interstate sells for other than resale purposes and over which the Commission has no jurisdiction.

It is submitted that a rate reduction order which is grounded upon an unwarranted assumption of prohibited jurisdiction expressly withheld from the Commission by the Congress, over production and gathering and over gas not sold for resale for ultimate public consumption cannot be in the public interest, and that a rate reduction order which must of necessity leave Canadian with an annual cash deficit of $551,000 and thus foreshadow its early financial ruin cannot be squared with the provisions of the Act, the Fifth Amendment, or the "end result" and "rate impact" principles announced by this Court in the Natural Gas Pipeline and Hope cases.

It is further submitted that the Circuit Court has misconstrued and misinterpreted the pronouncements of this Court in the Hope and Natural Gas Pipeline cases with respect to "end result" and "rate impact" principles and has adopted a view of such pronouncements which would reduce judicial review of the actions of the Commission under the Act to merely a perfunctory burial service over the grievances of the petitioner. It is further submitted that such a view is not justified by, but is in conflict with, said decisions and that this Court should exercise its supervisory power to clarify the same in the interest of the public and the natural gas industry, as well as your petitioner and the Commission.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that the petition for writ of certiorari should be granted.

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APPENDIX

The pertinent provisions of the Natural Gas Act of 1938 (52 Stat. 821, et seq.; Title 15, U.S.C.A., Sec. 717) are as follows:

Sec. 1 (a). "As disclosed in reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest."

Sec 1 (b). "The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

Section 4 (a). "All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

(b). "No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c). "Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from the date this Act takes effect) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services."

Section 5 (a). "Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however,* That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates."

Sec. 5 (b). "The Commission upon its own motion, or upon the request of any State commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas."

Section 6 (a). "The Commission may investigate and ascertain the actual legitimate cost of the property of every natural-gas company, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation and the fair value of such property."

Section 19 (b). "Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclu-

sive, and its recommendation, if any, for the modificati
or setting aside of the original order. The judgment a
decree of the court, affirming, modifying, or setting asi
in whole or in part, any such order of the Commissi
shall be final, subject to review by the Supreme Court
the United States upon certiorari or certification as pr
vided in sections 239 and 240 of the Judicial Code,
amended (U.S.C., title 28, secs. 346 and 347)."

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